



State of Washington
PUBLIC DISCLOSURE COMMISSION

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Memo

To: Commissioners
From: Sean Flynn, General Counsel
Date: January 20, 2023
Re: APA Rulemaking Petition re Enforcement of C-4 Report Filing

The petitioner, Conner Edwards, sent a rulemaking petition to each Commissioner by email on December 24, 2022. The petition was accompanied by written comment the petitioner had previously submitted to the Commission in August 2022.

Under the Administrative Procedure Act (APA), a person may petition an agency requesting the adoption, repeal, or amendment of a rule. Within 60 days of the submission of a petition, the agency must either deny the petition, or initiate the rulemaking process. If the Commission denies the petition, it must state its reasons for the denial, addressing the concerns raised and alternative means of addressing the concerns, where appropriate.

This petition seeks the adoption of a new rule that would codify a proposed policy for how the PDC manages the enforcement for timely filing of campaign summary (C-4) reports. C-4 reports include the summary totals of campaign contributions and expenditure activity through certain periods before and after an election, when applicable. The proposed rule prescribes a process the PDC must follow to initiate enforcement action against all campaigns who are assumed to have submitted a late C-4 report, so that agency action is “sufficiently ‘scary’ enough to intimidate filers into complying with the law.” See Edwards Written Comments, August 25, 2022, attached.

The proposal is problematic on its face. It would require the PDC to issue automatic penalty warnings for late filed C-4 reports before initiating a case. Penalty warnings would issue even where a campaign did not have to file a report (e.g., where there was no reportable activity), and require a campaign to affirmatively assert such defense to avoid a penalty warning. Finally, every penalty, whether agreed by stipulation or not, would be required to be presented to the full Commission.

Beyond the problems with the function of the rule itself, however, the petition is requesting a new agency policy for how to approach enforcement matters. Agency policy generally is considered within the agency’s strategic planning, which includes consideration of allocating resources, prioritization, and the mission of the agency, and prosecutorial discretion to address the most pressing matters with the highest impact to the public is a longstanding tenet of campaign-finance enforcement. The proposal would substitute rote operations for the

assessment of seasoned professionals, as well as having the effect, in some instances, of leveling accusations against campaigns that have committed no violation whatsoever and requiring them to proffer an affirmative defense.

The PDC's enforcement process has been developed over decades and is the subject of regular discussion with the Commission within the context of agency planning. In regard to staff-generated actions, group enforcement is the method the PDC uses to initiate enforcement for, e.g., late filings of campaign registrations (C-1 reports) and personal financial affairs statements (F-1 reports). This method follows existing enforcement rules established by the agency in accord with due process, administrative procedure, and the agency's mission. See Chapter 390-37 WAC.

The PDC has considered, and continues to assess, the expansion of the group enforcement process to other areas of reporting; however, there are limitations due to agency resource allocation, existing filing systems, and differences in the law that define the class of filers subject to enforcement. Staff submits that, while such expansion remains an active policy consideration, it is not something that requires or even warrants prescriptive rulemaking to accomplish.